

Application No. 10/677,694
Docket No. IB-8 (A4-1770)
Reply dated February 6, 2008
In response to Office Action of September 6, 2007

REMARKS

As of the filing of the present Office Action, claims 1-14, 17-31, 33-40, 44, 48-58, 60-63, and 65-72 were pending in the above-identified US Patent Application. In the Office Action, the Examiner objected to claims 60-62, rejected independent 1, all of its dependent claims, and claim 68 under 35 USC §112, first paragraph, and rejected all but claims 31, 61, and 66 under 35 USC §§102 and/or 103, cited claims 61 and 66 as reciting allowable subject matter, and allowed claim 31. In response to the above, Applicants have amended the claims as set forth above. More particularly:

Dependent claims 60, 61, and 62 have been amended as suggested by the Examiner to overcome the claim objections.

Independent claim 1 and its dependent claim 44 have been amended to recite the anchoring mechanism consistent with its description in Applicants' specification in the paragraph bridging pages 12 and 13 and consistent with its depiction in Figure 5 to address the 35 USC §112 rejection.

Independent claim 2 has been amended to incorporate the limitations of its allowable claim 66 (canceled without prejudice). As such, claim 2 and its dependent claims are believed to be allowable over the applied

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prior art.

Applicants respectfully believe that the above amendments do not present new matter, and request favorable reconsideration of remaining claims 1-14, 17-31, 33-40, 44, 48-58, 60-63, 65, and 67-72 in view of the above amendments and the following comments.

Claim Objections

As noted above, claims 60, 61, and 62 have been amended according to the Examiner's suggestions. Applicants therefore respectfully request withdrawal of the claim objections.

Claim Rejections under 35 USC §112, First Paragraph

Independent claim 1, its dependent claims 3, 5, 6, 9, 11, 12, 17, 19, 21, 23, 25, 27, 29, 33, 34, 37, 38, 44, 48, 57, 60-63, 69, and 70, and dependent claim 68 (which depends from claim 2) were rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Claims 1 and 44 were cited for reciting clamping means that comprises "smaller and larger portions of the implantable sensing device," and

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claims 63 and 68 were cited for reciting "the pacing/ICD unit powering the at least one sensing device." Applicants believe the rejections of claims 1 and 44 are addressed by the amendments thereto, which Applicants believe more precisely correspond to the disclosure in the paragraph bridging pages 12 and 13 of their specification. Specifically, claim 1 and 44 now recite the anchoring mechanism (14 in Figure 5) as comprising "first and second portions" that are recited in claim 1 as being "both foldable and expandable," and claim 1 has been amended to require

said sensor being disposed relative to the anchoring mechanism so that when said sensing device is implanted in the septum from the proximal side thereof and said sensor is within the opening in the septum, the first portion of the anchoring mechanism and a majority of said sensing device are located on the proximal side of the septum, said sensing device has minimum protrusion in the heart cavity on the distal side of the septum to minimize the risk of thrombogenicity, and said sensor is configured to monitor the one or more physiological parameters within the heart cavity; . . ."

This description uses terminology and provides a description that is consistent with the specification and supported by Figure 5 and original claims 42 and 50.

Applicants wish to clarify that the implantable "sensing device" is

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recited as comprising an "anchoring mechanism" (14) and "sensor" (101,201), such that the first and second portions (the umbrella-shaped members in Figure 5) are part of the "sensing device" itself, as well as the "anchoring mechanism."

Finally, regarding claims 63 and 68, Applicants believe the limitation in question is disclosed in Applicants' specification in the last sentence of the first full paragraph on page 11.

In view of the above, Applicants respectfully request withdrawal of the rejections under 35 USC §112.

Rejection under 35 USC §102

Independent claim 1 and its dependent claims 5, 6, 9, 11, 12, 19, 21, 23, 25, 27, 29, 37, 38, 44, 57, and 69 were rejected as being anticipated by U.S. Patent No. 6,409,674 to Brockway et al. (Brockway). As noted above, Applicants have amended claim 1 to more particularly recite the anchoring mechanism (14) described in their specification in reference to Figure 5. In particular, claim 1 now requires an

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anchoring mechanism [14] comprising first and second portions that are separated by the sensor and are both foldable and expandable, the first portion being adapted to pass through an opening of the septum and expand on a distal side thereof within the heart cavity, the second portion being adapted to expand on an oppositely-disposed proximal side of the septum, the first and second portions being configured to clamp the septum therebetween, said sensor [101,201] being disposed relative to the anchoring mechanism [14] so that when said sensing device is implanted in the septum from the proximal side thereof and said sensor [101,201] is within the opening in the septum, the first portion of the anchoring mechanism [14] and a majority of said sensing device are located on the proximal side of the septum, said sensing device has minimum protrusion in the heart cavity on the distal side of the septum to minimize the risk of thrombogenicity, and said sensor is configured to monitor the one or more physiological parameters within the heart cavity; . . .

The limitations set forth above are recited not merely in terms of intended use, but instead the implantable sensing device and its components must be physically configured to be capable of the recited use. For example, the first and second portions of the anchoring mechanism are described in terms of being "separated by the sensor," "foldable and expandable," and "configured to clamp the septum therebetween," and the sensor is described in terms of being "disposed relative to the anchoring mechanism" to enable the sensing

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device to be implanted in the manner described in claim 1.

In contrast, Brockway does not disclose an anchor configured to have two expandable portions that are separated by a sensor and capable of being disposed on opposite sides of a wall to clamp the wall therebetween while the sensor is within an opening in the wall. At best, if Brockway's sensor 105 were to be placed within an opening in a wall, Brockway's anchor of Figure 3D would result in both stabilizers 312D being on the same side of the wall.

In view of the above, Applicants respectfully believe that the limitations of claim 1 are not met by Brockway, and Applicants respectfully request withdrawal of the rejection under 35 USC §102.

Prior Art Rejections of Independent Claim 2 and its Dependent Claims

As noted above, independent claim 2 has been amended to incorporate the limitations of its allowable claim 66. Therefore, Applicants believe that claim 2 and its dependent claims 4, 7, 8, 10, 13, 14, 18, 20, 22, 24, 26, 28, 30, 35, 36, 39, 40, 49-56, 58, 65, 67, 68, 71, and 72 are allowable over the prior art of record.

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Rejections under 35 USC §103 Based on Brockway

Dependent claims 3, 17, 33, 34, 48, 60, 62, 63, and 70 (all of which depend from claim 1) were rejected as being unpatentable over Brockway in view of one or more additional references. Applicants respectfully believe that none of the additional references compensate for the differences between claim 1 and Brockway noted under Applicants' remarks to the §102 rejection. Applicants therefore respectfully request withdrawal of the rejections under 35 USC §103 based on Brockway.

IDS

With this Reply, Applicants are citing a number of patent references that were recently cited in commonly-assigned U.S. Patent Application Serial No. 10/730,439. Applicants believe these references, which are being cited for their disclosures of anchoring mechanisms, do not anticipate or obviate Applicants' claimed system and its anchoring mechanism. For example, U.S. Patent No. 6,309,350 discloses an implantable sensing device comprising a sensor 12 and anchor 10 (Fig. 3), U.S. Patent No. 6,328,699 discloses an

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implantable sensing device comprising a sensor 62 and anchor 68/70 (Fig. 8), and U.S. Patent No. 6,328,699 discloses an implantable sensing device comprising a sensor 50 and anchor 65 (Fig. 16G), none of which is disclosed as configured so as to be capable of locating "a majority of said sensing device . . . on the proximal side of the septum [so that] said sensing device has minimum protrusion in the heart cavity on the distal side of the septum."

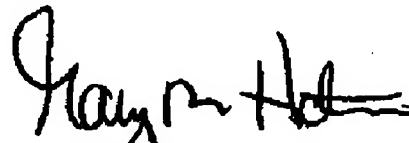
Closing

In view of the above, Applicants believe that all issues outstanding from the Office Action have been addressed, and that the claims define patentable novelty over all the references, alone or in combination, of record. It is therefore respectfully requested that this patent application be given favorable reconsideration.

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Should the Examiner have any questions with respect to any matter
now of record, Applicants' representative may be reached at (219) 462-4999.

Respectfully submitted,



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Attachments: Petition for Extension of Time; IDS; Fee Transmittal